

OFFICE OF GENERAL COUNSEL

February 18, 2011

OIL & GAS DOCKET NO. 09-0266906

The Complaint of the Robert Henry Family that the Injection Well Permit No. 01952 for the Seel-Mac Oil & Gas, LLP, Ferguson (00130) Lease, Well No. 59, Archer County, Texas Should be Terminated.

HEARD BY: Gene Montes, Hearings Examiner
 Donna Chandler, Technical Examiner

COMPLAINANT:

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REPRESENTING:

Robert Henry

RESPONDENT:

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Seel-Mac Oil & Gas LLC.

PROPOSAL FOR DECISION

COMPLAINT FILED:	May 26, 2010
NOTICE OF HEARING:	August 13, 2010
HEARING DATE:	September 17, 2010
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PROPOSAL FOR DECISION:	February 18, 2011

Statement of the Case

This case centers on a salt-scaled area around Well No. 59, located in the Archer County Regular Field, Archer County Texas. Well No. 59 is a saltwater disposal well that disposes of produced water on the W.P. Ferguson Lease and the Ferguson “B” Lease in Archer County. The owners of the surface estate are members of the Robert Henry family. The complaint seeks to have the permit issued for Well No. 59 in 1985 revoked pursuant to the provisions of Statewide Rule 46(d)(1) because of alleged violations of the terms and provision of the permit and of rules of the Railroad Commission (Commission). The regulatory basis for the revocation of the permit authorizing the operation of Well No. 56 is Statewide Rule 3.46(b). Rule 3.46(b) provides that an injection well permit may be modified, suspended, or terminated by the Commission for just cause after notice and opportunity for a hearing, if certain conditions exist. The Complainant alleged four conditions that it asserted required permit revocation.

- a. The applicant misrepresented a material facts during the permit issuance process.
- b. Fresh water is likely to be polluted as a result of continued operation of the well.
- c. There are substantial violations of the terms and provisions of the permit or of Commission rules.
- d. The operator has been exceeding its injection authority.

The Examiners recommend that the injection permit for Well No. 59 **not** be revoked. The Examiners do not find that there was any misrepresentation at the time the original permit application was filed. The permit was properly issued July 8, 1985. The Examiners find that there is no evidence that proper operation of injection Well No. 59 will result in contamination of the fresh water. The Examiners conclude that the violations identified by the Commission related to Well No. 59 have been addressed and that alleged violations of other wells on the W.P. Ferguson Lease and the Ferguson “B” Lease do not require revocation of the permit. Finally, the Examiners find that the operator has not exceeded its injection authority.

1. Introduction

This case centers on a salt-scalded area around Well No. 59, located in the Archer County Regular Field, Archer County Texas. Well No. 59 is a saltwater disposal well that disposes of produced water on the W.P. Ferguson Lease and the Ferguson “B” Lease in Archer County.¹ The reservoir produced on the W.P. Ferguson Lease and the Ferguson “B” Lease was initially discovered in 1922.² Well No. 59 was drilled as an oil well in 1968.³ In 1985, P.C. Burns, the operator of the well at that time, filed an application to inject produced fluids into Well No. 59.⁴ That application was granted and a permit (Permit No. 01952) was issued on July 8, 1985.⁵ Pursuant to the provisions of that permit, Well No. 59 is used to inject salt water into the Thomas Sand Formation at an average depth of 1760 feet.

As noted, the original operator of Well No. 59 was P.C. Burns.⁶ Seel-Mac Oil & Gas LLC was the operator in 2004, when Ricky Perritt became the court-appointed temporary receiver for Seel-Mac Oil & Gas.⁷ Mr. Perritt acted as the court-appointed temporary receiver for Seel-Mac Oil & Gas until 2010. Well No. 59, and the other producing wells on the W.P. Ferguson Lease and the Ferguson “B” Lease are currently operated by 2 S Operating.⁸ 2 S Operating filed its Form P-4 in September, 2010.⁹ The lease does not extend beyond a depth of 2000 feet.¹⁰ In addition to the injection well identified as Well No. 59, there are two other gravity flow injection wells on the lease: Well No. 1 and Well No. 37.¹¹

The owners of the surface estate are members of the Robert Henry family (Complainant or Henry). The surface estate owned by Henry measures 13,500 acres and the soil on the surface estate has been classified as prime farmland and is currently used for agricultural purposes.¹² The property was purchased by Henry in 2002.¹³ The property was purchased from the family of Brian Thomas Andrus.¹⁴ Henry filed this complaint on May 26, 2010. The complaint seeks to have the permit issued for Well No. 59 in 1985 revoked pursuant to the provisions of Statewide Rule 46(d)(1) because of alleged violations of the terms and provision of the permit and of rules of the Railroad Commission (Commission).

¹ Tr. pp. 36, 40, 72, 132, and 223.

² Henry Ex. 10, p. 3, Item 6. (Form H-1).

³ Henry Ex. 10, p. 2, Item 16. (Form H-1A).

⁴ Henry Ex. 10.

⁵ Henry Ex. 10, p. 1 (Permit to Inject Fluid into a Reservoir Productive of Oil and Gas.)

⁶ Henry Ex. 10, p. 3, Item 3. (Form H-1).

⁷ Tr. pp. 169, 181 – 182.

⁸ Tr. p. 195, ln. 23 – 196, ln. 11; p. 215, lns. 7 – 12; & p. 227.

⁹ Tr. p. 198, ln. 12 – 13.

¹⁰ Tr. p. 211, lns. 5 – 15.

¹¹ Tr. p. 71, lns. 1 – 21, Complainant Exhibit No. 7, p. 11 & 12.

¹² Tr. p. 27, lns. 20 – 22 & Tr. p. 37.

¹³ Tr. p. 27, lns. 5 – 7.

¹⁴ Tr. p. 24, lns. 14 – 16.

A hearing was held in this matter on September 17, 2010. At the hearing, the Complainant presented evidence that it alleged provided a basis for revocation of the permit. The following witnesses appeared on behalf of Henry: Clayton Henry and Thomas H. Richter. The following witnesses appeared on behalf of Seel-Mac Oil and the current operator: Brian Andrus, Ricky Perritt, J.C. Wells, and Roland Baker. The record was left open to allow the respondent an opportunity to file additional evidence. The evidence was filed on September 23, 2010, and the Henry was provided an opportunity to object. The objection was timely filed and on November 12, 2010, the Examiners ruled on the admissibility of the late filed exhibits, took judicial notice of the Commission files related to Well No. 59, and closed the record in this proceeding.

2. *Applicable Authority*

The regulatory basis for the revocation of the permit authorizing the operation of Well No. 56 is Statewide Rule 3.46(b). Rule 3.46(b) provides that an injection well permit may be modified, suspended, or terminated by the Commission for just cause after notice and opportunity for a hearing, if any one of the following conditions exists:

- a. A material change of conditions occurs in the operation or completion of the injection well, or there are material changes in the information originally furnished;
- b. Fresh water is likely to be polluted as a result of continued operation of the well;
- c. There are substantial violations of the terms and provisions of the permit or of Commission rules.
- d. The applicant has misrepresented any material facts during the permit issuance process.
- e. Injected fluids are escaping from the permitted injection zone.
- f. Waste of oil, gas, or geothermal resources is occurring or is likely to occur as a result of the permitted operation.

1. *Issues Presented by Complainant as Basis for Permit Revocation.*

Henry proposed four reasons for revocation of the injection well permit. First, the Complainant alleged that there was a misrepresentation of material fact in the original application that led to the issuance of Permit No. 1952 that authorized the use of Well No. 59 as an injection well. Second, Henry alleged that fresh water is likely to be polluted as a result of the continued operation of the well. Third, Henry also alleged that there have been substantial violations of the terms and provisions of the permit or of Commission rules. Fourth, the operator of Well No. 59 has exceeded its injection authority.

a. *Alleged Factual Misrepresentations on Original Application*

One basis contained in Rule 46(d)(1) for modification, suspension, or termination of an injection well permit is that the applicant misrepresented a material fact during the permit issuance process. The Complainant alleged that the applicant for the permit misrepresented a material fact during the permit issuance process by stating that the depth to the base of the deepest fresh water zone was sixty (60) feet.

In 1985 the operator of Well No. 59, P.C. Burns filed a Form H-1 and Form H-1A application to inject fluid into a reservoir productive of oil or gas. That permit was issued on July 8, 1985.¹⁵ The application indicated that the operator sought to expand its previous authority by the including an additional well on the same lease. The operator had previously been granted authority to inject fluids into other wells on the Ferguson Lease and Ferguson “B” Lease.¹⁶ The Form H-1A indicated that the depth to the base of the deepest freshwater zone was sixty (60) feet and the form indicated that the surface casing was set to a depth of sixty-three (63) feet. As part of its application, the operator for the injection well permit included a document entitled, “Depth of the Usable-Quality Groundwater to be Protected,” that reflected the Texas Department of Water Resources (TDWR) recommendation for the protection of usable-quality ground water: “The interval from the land surface to a depth of 100 feet must be protected.”¹⁷

Rule 46(f) required that the injection well be cased and cemented in compliance with Rule 13 in such a manner that the injected fluids will not endanger oil, gas or geothermal resources and will not endanger freshwater formations not productive of oil, gas, or geothermal resources. Rule 13 provided that an operator shall set and cement sufficient surface casing to protect all usable quality water strata, as defined by the TDWR.¹⁸

The Complainant alleged that in 1985 the operator misrepresented the depth of the usable-quality water strata by noting on the Form H-1A that the depth to the base of the deepest fresh water zone was sixty (60) feet. The Complainant alleged that this statement conflicted with the statement of the TDWR and concluded that this was a material misrepresentation of the applicant in 1985 was sufficient basis to terminate the permit under Rule 46(d)(1)(D).¹⁹

The Examiners find that this set of facts is an insufficient basis upon which to conclude that the applicant misrepresented a material fact during the permit issuance process. First, there is no indication in the record that in 1985 the applicant did not provide the form entitled, “Depth of Usable-Quality Ground Water to be Protected” to the Commission. In fact, this document is in the permit file. The Complainant did not allege that this document was not reviewed during the permit process. On the contrary, the permit file reflects that this form was provided. Third, there is a hand-written notation on Form H-1A next to the reference of sixty (60) feet with the number one hundred (100). While we cannot at this date ascertain who included that notation,

¹⁵ Henry Ex. 10.

¹⁶ Henry Ex. 10, p. 3, Item 10 (Form H – 1).

¹⁷ Henry Ex. 10, p. 3.

¹⁸ The TDWR is the predecessor to the Texas Commission of Environmental Quality (TCEQ). At the time the application for the injection well permit was made Rule 13(b)(2)(A)(i)

¹⁹ Closing Statement of the Robert Henry Family, pp. 2 – 3.

it suggests that no attempt was made to hide the TDWR analysis. Second, the Form H-1A seeks the following information from the applicant: “Depth to Base of Deepest Fresh Water Zone.” On the other hand, the statement from the TDWR does not indicate the depth of the base of the deepest fresh water zone. Instead, it is a recommendation regarding the protection of usable-quality ground water. Namely, the recommendation is that the interval from the land surface to a depth of 100 feet must be protected. Nowhere on the form is the depth to the base of the deepest fresh water zone indicated. Thus, the Examiners conclude that a misrepresentation has not been established.

The Complainant’s witness Richter suggested that the Commission should not have granted this permit with only a cement casing of sixty-three feet in light of the recommendation of the TDWR. Of course, as there was no misrepresentation in the permit issuance process the granting of that permit may not be challenged at this time, twenty-five years after it was issued. Nevertheless, the Examiners note that based on the application the Commission may have correctly concluded that sixty-three feet of surface casing combined with 1825 feet of long string with cement casing extended to the surface²⁰ may have been sufficient to protect all usable-quality water strata. Further, the Examiners note that this well was drilled in 1968.²¹ The permit file includes a letter from the Texas Water Development Board, dated February 22, 1968, that indicates that the depth of the water-bearing strata should be protected down to sixty feet.²² At the time the well was drilled in 1968, the operator complied with the recommendation of the Texas Water Development Board regarding the protection of usable-quality water strata.

b. Allegations that Fresh Water is Likely to be Polluted.

Rule 46(d)(1) provides that an injection well permit may be modified, suspended, or terminated by the Commission if fresh water is likely to be polluted as a result of continued operation of the well. The Complainant’s witness Mr. Richter argued that twenty-one wells within a quarter mile of Well No. 59 posed a potential conduit for the migration of produced fluid from the injection interval to other zones. He noted that many of those wells lacked surface casing.²³ He testified that seventeen of those wells penetrated the Thomas Sand formation which is the injection formation for Well No. 59. Complainant Henry maintained that all of these wells are a potential conduit for the migration of fluid out of the disposal interval.²⁴ Mr. Richter also performed certain pressure-front calculations. Based upon those calculations he alleged that injection in Well No. 59 caused sufficient pressure to bring oil field brine up through any available conduit to the base of usable quality water. This calculation was based upon an assumed total water injection of 611 barrels of water per day.

The Respondent witness Mr. Perritt, noted that there have been no breakouts from any other wells because of injection into Well No. 59.²⁵ This fact was confirmed by Mr. Baker, who

²⁰ Complainant Ex. 10, p. 2, Item 12.

²¹ Complainant Ex. 10, p. 2, Item 16.

²² Respondent Ex. 2, p. 4.

²³ Complainant Ex. 13, pp. 122 – 126.

²⁴ Closing Statement of the Robert Henry Family, p. 3.

²⁵ Tr. p. 179.

testified on behalf of the respondent.²⁶ Mr. Baker also testified that there is no pressure on the reservoir. Mr. Perritt also concluded that the casing in the well was intact based upon testing and usage.²⁷ The well has three strings of casing, the surface casing, the original production casing, and a liner inside the production casing.²⁸ Mr. Baker concurred and concluded that water injected into Well No. 59 will be confined to the injection zone.²⁹ The Respondent also disputed that the injection rate for the well exceeded 400 barrels per day.³⁰

The Examiners find that the Complainant has not established that fresh water is likely to be polluted as a result of the continued operation of Well No. 59. Each of the twenty-one wells identified by Mr. Richter was in existence at the time that Permit No. 1952 was issued for Well No. 59. Those wells were drilled between 1923 and 1958. The conditions of the wells were known at the time Permit No. 1952 was issued. The Complainant suggested that under current standards the permit would not be issued today. The Examiners, however, are not aware of any rule or policy that would require cancellation of a properly issued permit because the permit requirements have changed. The calculations of Mr. Richter were based on an assumed injection rate of over 600 barrels of water per day. The Respondent, however, established that the injection rate did not exceed 400 barrels per day for Well No. 59.

c. Violations of Commission Regulations

Rule 46(d) provides that an injection well permit may be modified, suspended, or terminated by the Commission if there are substantial violations of the terms and provisions of the permit or of Commission regulations. The Complainant identified three broad categories of violations that the Complainant maintained required revocation of Permit No. 1952. First, the Complainant outlined certain violations directly related to Well No. 59 that were identified by Staff of the Commission. Second, the Complainant identified a violation of Well No. 59 that was identified by the United States Environmental Protection Agency (USEPA) that resulted in a Consent Agreement and Final Order (CAFO). Third, the Complainant identified several violations related to other wells on the lease operated by the Respondent. In this context the Complainant also noted that an unidentified well had been previously discovered by Commission Staff on the lease and that the unidentified well had not been plugged.

i. Violations Related to Well No. 59 Identified by the Commission.

Complainant Henry established that numerous violations of Commission regulations occurred in 2007, 2008, and 2010 at Well No. 59 and the associated injection facility.³¹ Those violations were documented in several Commission inspection reports and associated correspondence submitted to the operator by the Commission. The violations that span from 2007 to 2010 are summarized in Table 1, below. Several violations related to Well No. 59 were

²⁶ Tr. p. 243, ln. 23 – 244, ln. 24.

²⁷ Tr. p. 180, lns. 12 – 25.

²⁸ Tr. p. 194, ln. 20 – p. 195, ln. 13.

²⁹ Tr. p. 246, lns. 4 – 21.

³⁰ Tr. p. 186, ln. 25 – p. 188, ln. 20; Tr. p. 203, lns. 10 – 22; Tr. p. 223, ln. 16 – p. 224, ln. 22.

³¹ Complainant Ex. 12.

also noted in 2004 and 2005.³² The inspection of 2004 referred to the area around Well No. 59 as an unauthorized emergency saltwater storage pit.

Table 1
Violations Identified by Commission Staff at Well No. 59: 2007 - 2010

Correspondence Date & Purpose of Inspection		Description
01/04/07	Complaint	Crude oil, basic sediment and produced saltwater were found to have overflowed from the storage facility onto the ground surface, and clean-up operations have been initiated.
01/24/07	Follow-up	Crude oil, basic sediment and produced saltwater were found to have previously overflowed from the storage facility onto the ground surface, and clean-up operations have been initiated. During the current inspection, frozen water prevented the inspection of all affected areas; however, Bob Beckham, operator representative, advised the remediation of the site would be completed and soil samples would be collected when drying conditions allowed entry of equipment into the spill site.
02/13/07	Follow-up	Crude oil, basic sediment and produced saltwater were found to have previously overflowed from the storage facility onto the ground surface, and clean-up operations have been initiated. During the current inspection, it was noted that the affected areas adjacent to Ferguson Road had been remediated as requested; however, due to muddy lease road conditions, Commission personnel were unable to inspect the affected areas located at the storage facility.
03/09/07	Follow-up	The previously cited violations of Statewide Rules 8 & 91 have been corrected and no further violations of Commission regulations related to this complaint were noted.
04/30/10	Complaint	Areas located at the saltwater disposal facility were found to be contaminated with produced fluids. A 2" drain pipe installed in the secondary containment was found to be actively leaking produced fluids outside the firewall and onto the ground surface. Bob Beckham, operator representative, was on-site during this inspection and gave assurance the clean-up operations would be initiated.
05/11/10	Follow-up	<ul style="list-style-type: none"> ➤ Areas located at the saltwater disposal facility were found to be contaminated with produced fluids. A 2" drain pipe installed in the secondary containment was found to be actively leaking produced fluids outside the firewall and onto the ground surface. Clean-up operations of this site were being conducted during this inspection. ➤ Well No. 59 was found to be equipped with casing open to the atmosphere. Bob Beckham, operator representative, has advised that during work over operations, the packer became stuck in the casing and it is the operator's intent to conduct milling operations to remove the packer. Rule 13 & 46. ➤ An unidentified well located . . . approximately 300' north of Well No. 57 was found to exist on the subject lease property . . . The well was the subject of Henry Complaint No. 08-9104, Job No. 08-3328 and was referred to the State Managed Plugging Section and to the High Risk Well Testing Section by correspondence dated February 28, 2008. Rule 14 & Rule 16.
05/27/10	Follow-up	<ul style="list-style-type: none"> ➤ All areas previously contaminated with produced fluids have been remediated as requested. A 2" drain pipe found to exist in the secondary containment has been removed from the firewall as requested. This matter has been resolved and

³² Complainant Ex. 8.

		<p>the District Office will take no further action in this regard.</p> <p>➤ Well No. 59 has been closed in as requested. Bob Beckahm and Ricky Perritt, operator representatives, have advised that during workover operations, the packer became stuck in the casing and it is the operator's intent to conduct workover operation on this well. The operator has requested additional time to bring this well into compliance and has indicated that operations should be completed by June 1, 2010.</p>
09/20/10	Complaint	<p>Areas located at the produced saltwater storage facility, Well Nos. . . . 59 were found to be contaminated with produced fluids. Well No. 59 and the injection pump were observed actively leaking produced fluids on to the ground surface. An operator representative was on location during the inspection. Steve Smith, operator representative, was contacted by phone on September 20, 2010, and was advised of all observed violations. Assurance was given that clean-up operations would be initiated.</p>

i. Violations Related to Well No. 59 Identified by the EPA.

Additionally, the Complainant documented violations identified by the EPA that culminated in Consent Agreement and Final Order Dated October 6, 2009. The EPA issued an Administrative Complaint on June 26, 2009. The violation alleged in the EPA Administrative Complaint was for the unauthorized discharge of a pollutant, specifically oil field brine, into the water of the United States in violation of Section 301(a) of the Clean Water Act.³³ As part of that consent agreement the operator agreed to install a facility shutdown mechanism at the facility which would shut the facility down in the event of an emergency, such as a flow-line rupture, a tank overflow, or disposal pump failure. The EPA also required additional soil remediation and restoration to brine-contaminated soils at the facility located northeast and down-gradient of the saltwater facility. As described in the EPA Administrative Complaint, on April 8, 2008, an EPA inspector observed that brine had been discharged from a flow line located at the facilities associated with Well No. 59. Specifically, the inspector determined that the water at the point of discharged into the tributary of Deer Creek was contaminated. The remediation program included in the settlement agreement is set out at Figure 2.

Figure 2
Remediation Procedures of EPA Consent Agreement and Final Order

<p>Perform three separate applications of soil amendments which shall consist of applying gypsum and straw to the brine-contaminated area. The contaminated area comprises approximately 12 acres.</p> <p>Each application shall consist of the following: 1) apply 5 tons of gypsum per acre to the surface (60 tons total); 2) once the gypsum has been applied, cover with 3 to 4 tons of straw per acre (36 to 48 tons total); and 3) till or disk the gypsum and straw into the surface to a depth of approximately 1 foot.</p> <p>Each application shall be separated by at least 1 month, and significant watering must take place between applications in order for the calcium ions in the gypsum to be exchanged with the sodium ions in the salt. Significant water shall consist of several rainfall events between applications, or in the alternative, the application of hauled water by the Respondent. Whether water is done through rainfall events or by hauling water and distributing it at the contaminated area, the water must be sufficient to cause the calcium ions and sodium ions to exchange</p>
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ii. Violations Related to Other Wells Operated on the Ferguson Lease

³³ Complainant Ex. 18, p. 18 – 21.

The Complainant documented a series of violations regarding the operation of several other wells on the Ferguson Lease. The violations were observed on various occasions. On April 5, 2010 and September 15, 2010 the Complainant, and/or the Complainant's witness documented various violations with photographs that were admitted at the hearing.³⁴ Inspections were conducted at the facility on May 6, 2010 and May 21, 2010. Those inspections were admitted as exhibits at the hearing.³⁵ An inspection was conducted on September 20, 2010, after the hearing was conducted, and the results of that inspection are documented in a letter provided to the operator that is part of the Commission files.³⁶

Well No. 1 – area contaminated with produced fluids (gravity flow injection well);³⁷

Well No. 3 – PVC coupling and area contaminated with produced fluids;³⁸

Well No. 31 – area contaminated with produced fluids;³⁹

Well No. 33 – area contaminated with produced fluids;⁴⁰

Well No. 39 – oil spill on site;⁴¹

Well No. 42 – production casing found to be loose and surface casing was not equipped with a wellhead assembly and a pressure observation valve;⁴²

Well No. 47 – area contaminated with produced fluids;⁴³

Well No. 51 – fluid leaking from stuffing box and produced fluids on ground;⁴⁴

Well No. 53 – fluid leaking from stuffing box and from well;⁴⁵

Well No. 56 – area contaminated with produced fluids;⁴⁶

Well No. 57 – area contaminated with produced fluids;⁴⁷

Well No. 60 – unplugged well;⁴⁸ and,

³⁴ Complainant Ex. 4 & 7.

³⁵ Complainant Ex. 12.

³⁶ Judicial notice was taken of the files related to Well No. 59 by the Examiners. *See, Examiners' Letter No. 2.*

³⁷ Tr. p. 71; Complainant Ex. 7, p. 11 (04/04/10); Complainant Ex. 12, pp. 21 – 25 (Inspection 05/06/10) & p. 27 (Inspection 05/21/10).

³⁸ Tr. pp. 55 & 72; Complainant Ex. 4, p. 20 (09/15/10) & Complainant Ex. 7, p. 16 (04/04/10).

³⁹ Tr. p. 70, Complainant Ex. 7, p. 7 (04/04/10); Complainant Ex. 12, pp. 21 – 25 (Inspection 05/06/10) & p. 27 (Inspection 05/21/10).

⁴⁰ Complainant Ex. 12, pp. 21 – 25 (Inspection 05/06/10) & p. 27 (Inspection 05/21/10).

⁴¹ Tr. p. 48, Complainant Ex. 4, 1 – 3 (04/04/10); Tr. p. 71, Complainant Ex. 7, p. 13; Complainant Ex. 12, pp. 21 – 25 (Inspection 05/06/10); and September 20, 2010, Correspondence in file (Inspection 09/17/10).

⁴² Complainant Ex. 12, pp. 20 – 28.

⁴³ Tr. P. 70, Complainant Ex. 7, p. 9 (04/04/10); Complainant Ex. 12, pp. 21 – 25 (Inspection 05/06/10) & p. 28 (Inspection 05/21/10).

⁴⁴ Tr. p. 51, Complainant Ex. 4, p. 10 (09/15/10); Tr. p. 71, Complainant Ex. 7, p. 15 (04/05/10); Complainant Ex. 12, pp. 21 – 25 (Inspection 05/06/10).

⁴⁵ Tr. p. 52, Complainant Ex. 4, p. 11 (09/15/10); Complainant Ex. 12, pp. 21 – 25 (Inspection 05/06/10) & p. 27 (Inspection 05/21/10); September 20, 2010, Correspondence in file (Inspection 09/17/10).

⁴⁶ Complainant Ex. 12, pp. 21 – 25 (Inspection 05/06/10); September 20, 2010, Correspondence in file (Inspection 09/17/10).

⁴⁷ Tr. p. 70, Complainant Ex. 7, p. 8 (04/05/10); Complainant Ex. 12, pp. 21 – 25 (Inspection 05/06/10) & p. 27 (Inspection 05/21/10).

⁴⁸ Tr. p. 70, Complainant Ex. 7, p. 10 (04/5/10).

Well No. 64 – area contaminated with produced fluids.⁴⁹

In addition to the above listed violations, the Commission Staff located an unidentified well on the property. The well has been referred to the State Managed Plugging Section and to the High Risk Well Testing Section. Staff requested that the operator provide a written statement delineating their responsibility to the District Office.⁵⁰

iii. *Operator's Response*

Mr. Perritt did not deny that spills occurred at Well No. 59 while he was responsible for its operation.⁵¹ In response to the allegations regarding violations, Mr. Perritt testified that every time he has been informed of a spill he has cleaned it up.⁵² Additionally, Mr. Wells testified that it was possible that the salt scalded area on the Ferguson lease might have been impacted by activities on the neighboring Morgan lease.⁵³ As to the spills at other wells, the majority of the spills were not major spills and were contained within close proximity of the relevant well. The operator indicated that it was his intention to clean those spills.⁵⁴ Additionally the operator indicated their intent to plug several wells.

iv. *Examiners' Recommendation*

The Examiners find that in nearly every instance the various operators of the well have responded to the directives of the district office and corrected any violations identified. While the Complainant would not concede that every violation was ultimately cleaned up, the Complainant conceded that the Commission would ultimately release the operator from the violation.⁵⁵ Furthermore, revocation of the permit due to the identified violations related to wells other than injection Well No. 59 is simply unreasonable and would result in the shut-in of several producing wells. Credible testimony was presented alleging that without the injection well the lease is not economical. The lease is commercially viable if the produced water is injected. On the other hand, the lease will cease being commercially viable if the produced water must be hauled off the property.⁵⁶ As to the issue of the alleged unauthorized saltwater disposal pit, the Respondent maintained that it was not, in fact, a salt-water disposal pit. Instead it is a berm that was built around the tanks. It was constructed in the event that there was an overflow to prevent the fluids from running onto the surface estate. The Respondent contended that this is often constructed around tanks and was specifically requested by a prior landowner and the Railroad Commission in this case to keep water from escaping the area around the

⁴⁹ Tr. p. 52, Complainant Ex. 4, p. 12 (09/15/10); Complainant Ex. 7, p. 6 (04/04/10); Complainant Ex. 12, pp. 21 – 25 (Inspection 05/06/10) & p. 27 (Inspection 05/21/10).

⁵⁰ Complainant Ex. 12, pp. 21 – 25 (Inspection 05/06/10) & p. 27 (Inspection 05/21/10).

⁵¹ Tr. p. 202, lns. 14 – 17.

⁵² Tr. p. 172, lns. 17 – 23.

⁵³ Tr. p. 235, ln. 15 – p. 237, ln. 20.

⁵⁴ Tr. p. 178, lns. 3 – 10; Tr. p. 215, ln. 9 – p. .

⁵⁵ Tr. p. 76, lns. 13 – 18.

⁵⁶ Tr. p. 183, ln. 18 – p. 184, ln. 5.

facility.⁵⁷ As to the violations encompassed in the order issued by the EPA, the operator has complied with the conditions of that order. In light of the operator's responsive actions, the Examiners do not recommend that the Permit No. 1952 be terminated.

a. Allegations that Operator Exceeded its Injection Authority

The Complainant alleged that the operators of Well No. 59 have exceeded their injection authority. The Complainant pointed out that the W-10 tests for these wells demonstrated that the wells on the Ferguson and Ferguson B Leases are capable of producing 850 barrels of water per day.⁵⁸ There is no dispute that as of the date of the hearing there is no meter on the well to determine the actual injection volume on the lease.⁵⁹

Mr. Perritt responded by stating that in the years he has been involved with the operation of Well No. 59, the most he has ever heard is 350 to 400 barrels a day in fluid.⁶⁰ This figure was consistent with recent measurements taken on the well.⁶¹ A representative of the current operator also testified that the total amount of salt water injected into Well No. 59 is less than 400 barrels a day.⁶² The operators of Well No. 59 conceded that there was no meter on the well. Nevertheless, they maintained that the amount of water injected into Well No. 59 could be determined by strapping the tank.⁶³ In its closing brief, the operator of Well No. 59 indicated that it intended to place a flow meter to measure saltwater.

The Examiners find that the Complainant has not established that the operators of Injection Well No. 59 have exceeded its injection authority. The operator has offered to install a flow meter to measure saltwater and the Examiners recommend that the operator of the well be ordered to install and maintain a flow meter.

Based on the record in this Docket, the Examiners recommend adoption of the following Findings of Fact and Conclusions of Law.

Findings of Fact

1. Notice of Hearing was provided to the parties through their attorneys of record who attended the proceedings and presented evidence.
2. A permit for Well No. 59 was issued on July 8, 1985, and was designated Permit No. 01952.
3. Well No. 59 is a saltwater disposal well that disposes of produced water on W.P. Ferguson Lease and the Ferguson "B" Lease in Archer County.

⁵⁷ Tr. p. 179 & Tr. p. 192, lns. 16 – 22.

⁵⁸ Tr. p. 133, ln. 15 – p. 134, ln. 10; Complainant Exhibit 15.

⁵⁹ Tr. p. 128, lns. 1 – 30.

⁶⁰ Tr. p. 171, lns. 8 – 20; Tr. p. 203, lns. 10 – 22 & p. 188, lns. 12 – 20.

⁶¹ Closing Statement of the Respondent.

⁶² Tr. p. 223, ln. 16 – p. 224, ln. 22.

⁶³ Tr. p. 224, lns. 1 – 22.

4. Pursuant to the provisions of the permit, Well No. 59 is used to inject salt water into the Thomas Sand Formation at an average depth of 1760 feet.
5. Seel-Mack Oil & Gas LLC was the operator of Injection Well No. 59 in 2004 when Ricky Perritt became the court-appointed temporary receiver for Seel-Mac Oil & Gas.
6. 2 S Operating filed its Form P-4 in September, 2010 and is currently operating Well No. 59 and the leases served by that well.
7. The owners of the surface estate are members of the Robert Henry family, who purchased the property in 2002.
8. Robert Henry filed a complaint on May 26, 2010, and the complainant seeks to have the permit revoked pursuant to provisions of Statewide Rule 46(d)(1) because of alleged violations of the terms and provisions of the permit and of the rules of the Commission.
9. A hearing was held on this matter on September 17, 2010.
10. In 1985, the operator of Well No. 59, P.C. Burns filed a Form H-1 and Form H-1A application to inject fluid into a reservoir productive of oil and gas.
11. Form H-1A requires the following information: Depth to Base of Deepest Fresh Water Zone.
12. The applicant indicated that the depth to the base of the deepest freshwater zone was sixty (60) feet and the form indicated that the surface casing was set to a depth of sixty-three (63) feet.
13. In 1985, the applicant included a letter from the TDWR that provided that the interval from the land surface to a depth of 100 feet must be protected.
14. The permit file does not indicate that the TDWR recommendation was not provided at the time the permit was considered.
15. The Form H-1A in the permit file includes a hand written notation indicating one hundred (100) feet.
16. Based upon the application and the applicable rules at the time the permit was issued, the Railroad Commission concluded that sixty-three (63) feet of surface casing combined with 1825 feet of long string with cement casing extended to the surface was sufficient to protect all usable-quality water strata.
17. There is no pressure on the reservoir and there have been no breakouts from any other wells as a result of injections into Well No. 59.
18. The injection rate into Well No. 59 does not exceed 400 barrels per day.

19. The casing in the Well No. 59 is intact based upon testing and usage. The well has three strings of casing: the surface casing, the original production casing and a liner inside the production casing.
20. Water injected into Well No. 59 will be confined to the injection zone.
21. From 2007 through 2010, inspections of Well No. 59 by the Commission staff resulted in several notices of violation.
22. In addition to the violations related to Well No. 59, the complainant presented evidence regarding alleged violations of several other wells served by injection Well No. 59 on the W.P. Ferguson Lease and the Ferguson "B" Lease.
23. In nearly every instance the various operators of Well No. 59 responded to the directives of the District Office of the Railroad Commission of Texas and corrected any violations identified.
24. Revocation of the permit would result in the shut-in of several producing wells.
25. A berm around Well No. 59 to prevent fluids from running onto the surface estate and was previously constructed at the request of the prior landowner and the Railroad Commission.
26. The berm around Well No. 59 is not a saltwater disposal pit.
27. The United States Environmental Protection Agency (USEPA) alleged certain violations related to Well No. 59 that resulted in a Consent Agreement and Final Order Dated October 6, 2009.
28. As part of the agreement the operator agreed to install a facility shutdown mechanism or system at the facility which would shut the facility down in the event of an emergency, such as a flow-line rupture, a tank overflow, or disposal pump failure.
29. The operator also agreed to additional soil remediation and restoration to brine contaminated soils at the facility.
30. The salt scalded area was impacted by activities related to injection Well No. 59 and also may have been impacted by activities on the neighboring Morgan lease.
31. The operator has not exceeded its injection authority.
32. The operator has offered to install a flow meter to measure saltwater injected into Well No. 59.

Conclusions of Law

1. Proper notice of hearing was timely given to all persons legally entitled to notice.
2. All things have occurred to provide the Commission jurisdiction to consider this matter.

3. The regulatory basis for the revocation of permit authorizing the operation of Well No. 56 is Statewide Rule 3.46(b). Rule 3.46(b) provides that an injection well permit may be modified, suspended, or terminated by the Commission for just cause after notice and opportunity for a hearing, if any one of the following conditions
- a. A material change of conditions occurs in the operation or completion of the injection well, or there are material changes in the information originally furnished;
 - b. Fresh water is likely to be polluted as a result of continued operation of the well
 - c. There are substantial violations of the terms and provisions of the permit or of commission rules
 - d. The applicant has misrepresented any material facts during the permit issuance process
 - e. Injected fluids are escaping from the permitted injection zone
 - f. Waste of oil, gas, or geothermal resources is occurring or is likely to occur as a result of the permitted operation.

Recommendation

The Examiners recommend that the injection permit for Well No. 59 not be revoked. In conclusion, the Examiners find that the Complainant has not established that the permit for injection Well No. 59, Permit No. 1952, should be revoked. The Examiners do not find that there was any misrepresentation at the time the original permit application was filed. The permit was properly issued July 8, 1985. The Examiners find that there is no evidence that proper operation of injection Well No. 59 will result in contamination of the fresh water. The Examiners conclude that the violations previously identified by the Commission related to Well No. 59 have been addressed and that alleged violations of other wells on the W.P. Ferguson Lease and the Ferguson "B" Lease do not require revocation of the permit. Finally, the Examiners find that the operator has not exceeded its injection authority. Nevertheless, the Examiners recommend that the operator of the well be ordered to install and maintain a flow meter.

Respectfully submitted,

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Hearings Examiner

Donna K. Chandler
Technical Examiner

